

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY LEE GRAY,
Plaintiff,

v.

HOME DEPOT COMPANY, et al.,
Defendants.

No. 24-cv-02108 SCR P

ORDER

Plaintiff, a county prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983. Before the court are plaintiff's third motion to appoint counsel (ECF No. 12) and motion for 90-day extension of time to obtain full names of defendants (ECF No. 13.) For the reasons described below, both motions are denied.

On February 6, 2025, the undersigned issued findings and recommendations that plaintiff's complaint be dismissed without leave to amend for failure to state a claim upon which relief can be granted. (ECF No. 11.) The court directs plaintiff to that order for specific instructions on how file any written objections with the court regarding the recommendation of dismissal within twenty-one days (21) of being served with the findings and recommendations.

MOTION TO APPOINT COUNSEL

District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298

(1989). In exceptional circumstances, the court may request that an attorney voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that would warrant a request for voluntary assistance of counsel. Wood, 900 F.2d at 1335; Riley v. Franke, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018).

Again, on February 6, 2025, the undersigned issued findings and recommendations that plaintiff's complaint be dismissed without leave to amend for failure to state a claim upon which relief can be granted. (ECF No. 11.) In the same order, the undersigned denied plaintiff's motions to appoint counsel (ECF Nos. 9 and 10) as premature considering the recommendation to dismiss without prejudice and for failure to show exceptional circumstances. (Id. at 5.) Plaintiff's renewed, one-page motion here similarly lacks any showing of exceptional circumstances or reasons why appointment is not premature and/or moot. Accordingly, plaintiff's motion is denied.

EXTENSION OF TIME

Plaintiff seeks a 90-day extension of time to obtain the full names of defendants. (ECF No. 13.) However, defendant is not currently under any obligation to produce other defendants' true names. The undersigned recommended that the complaint be dismissed not because plaintiff named Doe defendants, but because he failed to allege facts that any of the defendants – two private actors and a private entity – acted under color of state law. (See ECF No. 11 at 3-4.) Accordingly, plaintiff's motion for an extension of time is denied.

CONCLUSION

Accordingly, IT IS ORDERED that:

1. Plaintiff's motion to appoint counsel (ECF No. 12) is denied; and

1 2. Plaintiff's motion for a 90-day extension of time to obtain the full names of defendants
2 (ECF No. 13) is denied.

3 The undersigned again directs plaintiff to its order dated February 6, 2025 (ECF No. 11),
4 for instructions on how to submit written objections regarding that recommendation that
5 plaintiff's complaint be dismissed without leave to amend for failure to state a claim upon which
6 relief can be granted.

7 DATED: February 28, 2025

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10 SEAN C. RIORDAN
11 UNITED STATES MAGISTRATE JUDGE
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